

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN JOHN C. BOHLINGER**, on January 28, 2003 at 3:15 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. John C. Bohlinger, Chairman (R)
Sen. John Esp, Vice Chairman (R)
Sen. Jerry W. Black (R)
Sen. Brent R. Cromley (D)
Sen. Kelly Gebhardt (R)
Sen. Bill Glaser (R)
Sen. Rick Laible (R)
Sen. Jeff Mangan (D)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent:

Sen. Jim Elliott (D)

Staff Present: Leanne Kurtz, Legislative Branch
Phoebe Olson, Committee Secretary

Please Note:

These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 227, 1/21/2003; HB 132,
1/24/2003; SB 246, 1/24/2003

Executive Action:

HEARING ON SB 227

Sponsor: SENATOR MIKE WHEAT, SD 14, Bozeman

Proponents:

Tim Davis, MT Smart Growth Coalition
Scott Bosse, Greater Yellowstone Coalition
Mary Sexton, Teton County
Anne Hedges, Montana Environmental Impact Center
Mark Hagerty, Greater Yellowstone Coalition
John Vincent, Gallatin County Commissioners

Opponents:

Linda Stoll, MT Association of Planners
Sharon Haugen, Lewis and Clark County
Peggy Trenk, MT Association of Realtors
Jim Kembel, MT Association of Registered Land Surveyors
Howard Gipe, Flathead County
Byron Roberts, MT Building Industry Association

Opening Statement by Sponsor:

SENATOR MIKE WHEAT, SD 14, Bozeman, submitted a written copy of his opening statement. **EXHIBIT**(los18a01)

Proponents' Testimony:

Tim Davis, Montana Smart Growth Coalition, urged the committee to support the bill because they believed it gave local governments more tools to help protect people and property from flood and fire. He said the bill simply required local government adopt existing flood and fire maps into their growth policy. He said local governments should take into account those maps when creating a strategy to protect people from flood and fire. He said protecting people from flood and fire was one of the most fundamental public health and safety issues, and they believed this bill was important for that reason.

Scott Bosse, Greater Yellowstone Coalition, was in support of the bill. He said his training was as a fisheries biologist, but he didn't want to bore the committee with biological impacts. He thought he would talk about the fiscal impacts. He maintained that nationwide billions of dollars were spent every year on flood disaster relief, because local governments had failed to take the necessary steps to protect people and property. He said in the last five years approximately 40 billion dollars in flood disaster relief was paid by U.S. taxpayers. He said it was

important to note that between 1978 and 1994, 41 percent of these flood disaster bail-out bills were replacing lost structures. He said he had heard of a particular house being replaced 31 times because it was located in a floodplain. He thought they could all agree from a fiscal perspective that did not make too much sense. He said today because of lack of planning there were 10 million U.S. homes located in 100 year floodplains, and together they were worth \$390 billion dollars. He described Montana's famous fisheries were attracting many people to this state to live next to rivers and streams. He said his coalition had done a study in Park County last year and there were 600 buildings in the 100 year floodplain near the Yellowstone River. He said the lifeblood of Park County was the Yellowstone River and it's fisheries and river recreation. He wondered what we were doing to those economic assets if we continued to allow haphazard development in floodplains. He said we needed to do everything we could to protect those assets. He said the American Sport Fishing Association did a study in 2001 state by state and assessed the value of fisheries to each state. In Montana they found that the cold water fisheries contributed \$545 million dollars a year to the state economy, supported 7,000 jobs and produced \$5.6 million dollars in state income tax revenue. He thought those were significant figures and he contended that the greatest threat to those fisheries in Montana comes from rapid development in the floodplains. He said this was a good opportunity to prevent a flood disaster from occurring, resulting in millions of dollars, human lives, valuable fisheries and river recreation being lost. He believed that some would say this was not a good bill because a lot of the floodplain maps that we have are very old and not particularly accurate. He maintained it was expensive to map floodplains, but that the most responsible thing for the state of Montana to do, would be to regularly re-map their flood plains. He said he thought this was a common sense measure from both a fiscal and environmental perspective.

Mary Sexton, Teton County, said she became more aware of the dangers of wild land urban interface problems when a wild fire came very close to her house two years ago. She said Teton County was in the process of developing a growth management policy. She believed including the definition of wild and urban interface and also strategies that assist counties in dealing with the coming challenges of more and more development was a good idea. She was in support of the bill.

Anne Hedges, Montana Environmental Information Center, discussed the fiscal impacts of fire and the urban wild land interface issue. She handed out **EXHIBIT (los18a02)** and **EXHIBIT (los18a03)** which outlined the cost of fighting fires in Montana from 1989-2003. She maintained people were not building in the appropriate places when it was costing this much money to defend structures. She

read an article that stated the director of FEMA said Montana was spending \$3 million dollars a day to fight forest fires to protect homes in the summer of 2000. She maintained another article stated that in some areas it would have been cheaper to buy the property from owners than to protect the structures. She said these were economic issues. She said an estimated 9,000 homes were destroyed by wild fire between 1985 and 1995. She maintained people were building where they shouldn't. She said it was time to start thinking about these issues in our planning. It was costing money, homes, property, and taxes. She said the issue needed to be handled for fiscal responsibility.

Mark Hagerty, Greater Yellowstone Coalition, said he wanted to address the urban wild land interface issue as well. He too talked about the cost of fighting fires. He handed out the map of the Purdy Fire, **EXHIBIT(los18a04)**. He thought it was incumbent on counties to deal with the risk of these fires. The cost of fighting these fires was tremendous. He said fires in the urban wild land interface cost more for obvious reasons. Fire managers and the public demand more resources to suppress these fires. The tactics used to fight them are more expensive. Fire fighters take higher risks to protect homes. He said the Greater Yellowstone Coalition contended that a one size fit all solution was not appropriate. He said it was incumbent upon the state to empower counties to use as many tools as are at their disposal to deal with these problems. He said this bill was a good start to accomplishing that.

John Vincent, Gallatin County Commissioners, said the last two speakers had touched on it slightly but he wanted to touch on the cost to taxpayers and the threat to public safety. He showed the committee a map of the Purdy Fire. He said when you were talking about wild land urban interface you were discussing the homes that were built up in and near to the forest, whether it be private land, federal land, or state land. He said to put that in context the Purdy fire started on September 28, 2001 and burned until October 7, 2001. He said at the final count 5,958 acres had burned, and had cost \$5 million dollars to suppress. **{Tape: 1; Side: B}**. He said according to the district ranger 80 percent of the cost \$4.2 million dollars was spent solely to protect homes. He said if those homes had not been there the approximate cost of fighting that fire would have been \$800,000. He said the bill for fighting this fire was primarily federal but the county spent \$48,514.25 on personnel in regard to this fire, \$10,412, on equipment and \$242 on various expenses for a total of \$59,000. He said some of those costs were passed on to state and federal agencies, which he maintained would be taxpayer dollars. He said 80 percent of that would get that figure down to \$47,000. He said the expense would have been far less if it wasn't for the

protection and public safety issues being involved. He said law enforcement put in 1267 man hours in regards to fighting this fire. He said that took 158 days worth of time that sheriff deputies could have spent patrolling Gallatin County instead. He said 50 percent of all flooding in the US today occurs outside the FEMA flood plain map. He said something that monitored this situation to protect public safety and taxpayers was important. He commented that other insurance holders pay for losses caused by fires as well.

Pat Clinch, State Council of Professional Firefighters, said he was in support of the bill primarily for the firefighters safety issue. He said one of the first things they were trained to do was work out a pre plan, they need to know what was on the ground, where escape and safety zones were and so on. He said having a plan in place before the fire breaks out, was very important for firefighters safety. He said many times these areas are added into their jurisdictions, and they don't know what had happened before they took over. He said a lot of times the roads in these areas are not large enough to handle fire truck traffic, nor do they have two ways in and two ways out. He said they needed to inform the public that many times when houses were being built in the wild land urban interface areas, all your doing was adding fuel to an area that could burn. He said many times the areas are not defendable and if it was not safe for firefighters to enter, all they had done was add more fuel to the forest.

Opponents' Testimony:

Linda Stoll, MT. Association of Planners, said they were concerned because they had a hard time trying to get counties to adopt growth policies in the first place. She said the growth policy act did not come around until 1999. She said it had been a tough issue, that had been the subject of attorney general opinions and many disputes about what is and what should and should not be included in growth policies. The planners were of the opinion that more should not be added to this required section while they were still trying to sort out where they were with this. She said they had a long discussion about the floodplain. She said many counties were not willing to adopt FEMA floodplain maps that they disputed. She read a small section of existing statute on subdivision regulations 76-3-504, "the subdivision regulations adopted under this chapter must at a minimum provide for the identification of areas that because of natural or human caused hazards are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques." She maintained that language existed in statute already. She pointed out on page three the strategy for

elimination or reduction of inappropriate and unsafe new development in areas susceptible to floods and in wild land urban interface areas. She asked the committee to think about the people who would be responsible for implementing this part of the law. She asked for further definition of what was considered safe and new. She said others had testified this would not be a burden to local governments to deal with new mapping and so on. She said in fact on page four line 15 the bill said that if a floodplain had not been designated pursuant to tilts 76 chapter 5, you must include a map delineating areas susceptible to floods that meets or exceeds the requirements of 76-5-202. She said she looked that statute up and there were no requirements in that statute. She recited that these designations must be based on reasonable hydrological certainty. She said she had received an estimate from a county on what it cost to develop hydrological data and she said they were talking about 10,000 per stream mile. To try to do a whole county would be a burden. She said the planners felt some of this language was great, but suggested it be put in the 604 section of the growth policy act rather than a mandatory requirement at that time.

Sharon Haugen, Lewis and Clark County, said the county wanted to be on record in opposition to the bill. She said they too were opposing FEMA in terms of flood plain designation. She said they currently had a growth policy in place that included a tri-county fire hazard map. She said they recognized they had issues with urban interface planning but opposed that this be a requirement. She said the map she referenced was updated by a volunteer group of people and with out them they could not afford to update that map. She said the main reason they were opposing the bill was they felt the law already provided their county to look at fire hazard maps and floodplain maps and develop rules and regulations for subdivisions. She said lastly fire and flood hazards are certainly not the only hazards they worry about. There were seismic zones, lipid faction, steep slopes and so on. She said they were concerned, that this could be cost prohibitive for many of the smaller counties.

Peggy Trenk, MT Association of Realtors, said they were in opposition to the bill. She said previous speakers had captured what she wanted to say. She reiterated that planning was a major issue. She said she was concerned that adding mandatory requirements to the growth policy could scare more people away from planning. She believed this bill would only make planning more difficult, particularly for smaller counties.

Jim Kimball, MT Association of Registered Land Surveyors, said other speakers had covered their thoughts as well. He said this may work in some areas but not in all. He said he had a lot of

faith in local governments handling their own problems and the less that was dictated to them the better.

Howard Gipe, Flathead county Commissioner, said they strongly opposed the bill. They said they had problems with the flood areas, and were fighting to designate what were floodplains and what weren't. He said they worked with these problems with their subdivision regulations everyday, and saw no need for this bill.

Byron Roberts, MT Building Association, said state growth policy regulation was designed to provide a framework for encouraging local governments to plan. He said it was advisory in nature and provided guidance to local governments to prepare local growth policies or comprehensive plans, and they are also advisory. He said local plans were implemented through local ordinances like subdivision regulations, zoning ordinances, capital improvements programs, and formal public policy decisions. He said SB 227 attempted to put regulatory language in statute calling for delineation of forest lands, floodways, and mandates that local government develop a strategy for elimination and reduction of inappropriate and unsafe new development in these areas. He said this was scary and it was zoning at the state level. He said state growth policy already allowed local governments to do exactly what this bill calls for if they so choose. Local planning and decision-making must remain at the local level. He said the intent of this bill was regulatory and these regulations do not belong in state planning.

Questions from Committee Members and Responses:

SENATOR JEFF MANGAN said he had a problem with trying to determine what line 15 and 16 on page 3 meant. He asked **John Vincent** how he saw that being implemented in his growth plan.

John Vincent said he saw it being eliminated by the work of the planning department and three county commissioners sitting down, and finding models to where policies like that had been implemented in other areas, and developing a strategy based on that. He said he did not think it was an overwhelming challenge.

SENATOR MANGAN asked if this would only affect what happens after the bill was enacted.

John Vincent said as far as he knew there would be no retroactivity.

{Tape: 2; Side: A}

SENATOR RICK LIABLE asked if there was anything in the existing statutes and regulations that prevented implementing this in a growth policy.

John Vincent replied there was not.

SENATOR LIABLE clarified that under the current statutes they could do everything they wanted that was included in this bill, under local authority.

John Vincent said he believed so. He said if you lived in a county that chose to, those people would be provided with that protection, if you live in a county that doesn't happen to have that protection; then those residents could pay a pretty hard price because of the lack of regulation.

SENATOR KELLY GEBHARDT asked if Gallatin County had floodplain maps in their policy.

John Vincent said they had a growth policy they were almost ready to adopt that will not include floodplain maps at this point, but they were going to work on that.

SENATOR GEBHARDT said the code defined a floodplain map and the bill said the map had to be as good as what was described in code or better, he submitted that when he was county commissioner they adopted a floodplain plan and had asked FEMA to do the maps through the state of Montana and they replied they could get to it in about 15 years. He thought the effective date would be quite a bit sooner than 15 years.

John Vincent said there were lots of ways to make that kind of delineation and determination. He said in regards to FEMA as far as he knew, no one from FEMA had set foot in Gallatin County and actually looked at what they had outlined to be floodplain areas. He said it was all done from Washington D.C.. He said it should be a call on the local level not based on what FEMA was calling a floodplain.

SENATOR JERRY BLACK wanted to make sure he understood that the counties could put those regulations in effect and develop their own growth policies and this bill was a duplication of that.

John Vincent replied that was a fair statement.

SENATOR BLACK asked if there were any policies in effect for new growth developments in the area of the Purdy fire.

John Vincent said there was not at that time.

SENATOR BLACK asked if most counties had growth policies in effect at this time.

John Vincent replied they did not.

SENATOR BLACK asked if it was a priority to get those developed across the state.

John Vincent said he couldn't say, he thought in high growth counties the answer would probably be yes.

Closing by Sponsor:

SENATOR WHEAT said he had forgotten to tell the committee that he had some amendments they could discuss in executive action. He said they might take care of some of the problems the opposition had with the bill. He said the important thing was to establish policy at the state level that encouraged counties look at growth, and look at urban interface areas. He thought as a state you had to think about these things. He looked forward to executive action.

HEARING ON HB 132

Sponsor: REPRESENTATIVE JOHN MUSHGROVE, HD 91, Havre

Proponents:

SENATOR KEN HANSEN
Pat Clinch, MT Council of Firefighters

Opponents:

None

Opening Statement by Sponsor: REPRESENTATIVE JOHN MUSHGROVE, HD 91, Havre maintained this act would revise municipal classification. He said after the last US Census, Havre was 270 people short of a class one designation. He said it was important to Havre to maintain their class one status. He called the committee's attention to lines 14 - 16 of the bill. He said that language broadened the range of classification and also parlayed the remaining two subsections that had been modified to meet the needs of other cities in those classifications. He said Section 2 changed the code for city elections. He said to his knowledge no communities held annual elections anymore. He said Mayor Rice could not be at the meeting, but would give a

passionate plea for help on this unique problem. He reserved the right to close.

Proponents' Testimony:

SENATOR KEN HANSEN, SD 46 said he was in support of the bill, and if it was passed out of committee he would be glad to carry it on the Senate Floor.

Pat Clinch, MT Council of State Firefighters was speaking on behalf of **REPRESENTATIVE BOB BERGREN**, who wanted to be on record in support of the bill.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SENATOR LIABLE asked what the advantage of being a class one city was?

Alec Hansen, League of City and Towns said a first class city had an all-paid fire department. He also addressed there was a problem because they would have to re-elect all of their officers for new terms if there was a reclassification. He said the mayor would like to finish his four year term before he had to run for election again.

SENATOR MANGAN asked where the 9,000 figure came from.

REPRESENTATIVE MUSGROVE thought that would encompass more of the cities closer to the 10,000 mark.

SENATOR MANGAN said versus like 8,500 or 8,000.

Alec Hansen said 9,000 worked because no other city would be effected during the current census cycle.

SENATOR MANGAN clarified that currently there was no city besides Havre between 7,500 and 9,000.

Alec Hansen, said there was not a city between nine and ten thousand other than Havre.

SENATOR BRENT CROMLEY asked if a second class city could have an all paid fire department.

Alec Hansen said they could, but the temptation was always there with a change in government to supplement the fire department with volunteers.

Closing by Sponsor:

REPRESENTATIVE MUSGOVE, thanked the committee for the questions and the discussion. He said another factor of this bill would have included the size of the city council and other issues, including the archaic way the code dealt with municipalities. He hoped the committee could help them with their problem, and asked the committee to pass the bill.

{Tape: 2; Side: B}

HEARING ON SB 246

Sponsor: **SENATOR BILL GLASER, SD 8, Huntley**

Proponents:

Charles Brooks, Yellowstone County
Gordon Morris, MT Association of Counties
Alec Hansen, League of Cities and Towns

Opponents:

None

Opening Statement by Sponsor:

SENATOR BILL GLASER, SD 8, Huntley, said that rather than looking at the bill he thought it was easier to look at the problem. He said Yellowstone county had three areas that had been recently annexed into the city, and were having problems with fire service areas. He said the county commissioners had discovered that when the city took over part of the fire service area, that there was no way other than going out and changing the boundaries to get rid of double taxation for fire service. He said it looked simple in this stage, but there would always be people that said it did not fit their situation. He said they might need to go slow on the process and let people make sure it fit all the other areas of Montana. He maintained that the Yellowstone County Attorney had said the only way to prevent the double taxation was to go out and get signatures and petition a partial area out of a complete area. He said this was trying to come up with an orderly way other than petitions to eliminate the double taxation of these folks in Yellowstone county.

Proponents' Testimony:

Charles Brooks, Yellowstone County, submitted testimony from Jim Kraft of Yellowstone County. **EXHIBIT (los18a05)**

Gordon Morris, MT Association of Counties, thought Senator Glaser's statements were correct. He maintained that this was a resolution brought before his membership in September of 2002 and had been rejected. He said the bill before them was workable with a couple minor technical changes. He said there was a lot in the bill that did not belong there. He thought all the bill needed was section 4, and section 5. He asserted that the petition dilemma that Senator Glaser spoke of could be cleared up by going to page 4 line 7 and say "may alter the boundaries using the same procedures required for the creation of a fire service district as set forth in subsection 2." He thought if you made that change the board could do it and everything would fall into place. He thought there was also a major drafting flaw in section 5. He said line 17 "the board of county commissioners shall establish a schedule of rates to be charged to the owners of structures." He said this was not a property tax or a mill levy but a structure fee. He said the principal property in a fire service area is the structure. So you pay a fee based upon rates determined by the county commission. As a result any reference in the bill relative to the procedure for calculating the levy or adjusting the levy, are totally out of context in his opinion. He suggested that on line 29 should simply read, "if the fire service is reduced or eliminated by annexation all or part, then the county commissioners shall remove the portion eliminated from the assessment as set forth up above in section 1 effective at the end of the proper assessment period. He said the bill would still worry him. He pointed out that in section 6, the idea of having the Department of Revenue adopting rules to adjust the mill levy calculated pursuant to subsection 1, there is no mill levy it is a fee. He said it had nothing to do with entitlement and the city should not be reducing their mill levy relative to what they are doing by having to provide service and taxing that new property based upon that tax. He said if you were in that fire service areas you were transferring your fee, and taking on the obligation of a mill levy. He thought if you modified sections 4 and 5 for the most part you would accomplish what the Senator wants to do on behalf of Yellowstone county and it wouldn't do damage to any existing rules. He assured them from a county perspective you will get conflicting county attorney opinions on this question. He said he would be happy to work with Leanne on amendments to the bill and would answer any questions.

Alec Hansen, League of Cities and Towns, said he appreciated Senator Glaser's offer to work on the bill. He said he would be happy to work with Leanne Kurtz to iron out the problems, he said double taxation was unfair, and they would do everything they could to come up with a solution that did not cause problems some place else.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SENATOR CROMLEY asked if they were talking about people in a fire service area that was then annexed. He assumed they were paying on some debt to start that fire service area and then when they are annexed they come under the city fire taxation and are being taxed twice. He asked how long this was happening.

SENATOR GLASER said there were more than one type of levy but they were only dealing with one here. He said if you owe money you can not walk away from that. He said when people move out of that area and into the city they shouldn't have to pay fees for fire suppression in that area.

SENATOR CROMLEY said so as it stands now, when they are annexed is it just for one year they pay both or is it ongoing.

SENATOR GLASER said it would continue until such time as the county attorney lets them collect it some other way.

Closing by Sponsor:

SENATOR GLASER, said he thought everything had been said. He appreciated the offers to help iron out the problems with the bill.

ADJOURNMENT

Adjournment: 4:45 P.M.

SEN. JOHN C. BOHLINGER, Chairman

PHOEBE OLSON, Secretary

JB/PO

EXHIBIT (los18aad)